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November 14, 2022

VIA ECF

The Honorable Jill A. Otake
United States District Court
District of Hawaii
300 Ala Moana Blvd C-338
Honolulu, HI 96850

RE: *Yukutake v. Shikada*, 1:22-cv-00323-JAO-KJM
Response to Notice of Supplemental Authority

Dear Judge Otake:

The Attorney General's motion to dismiss (Dkt. 18), which is scheduled to be heard before this Court on December 1, 2022 (Dkt. 20), is a facial FRCP Rule 12(b)(1) challenge to the sufficiency of the allegations in Plaintiffs' complaint. "A facial attack challenges the sufficiency of the allegations contained in a complaint to invoke federal jurisdiction[.]" *Gilliam v. Galvin*, No. 19-cv-00127-JAO-RT, 2019 WL 6718665, at *2 (D. Haw. Dec. 10, 2019). In particular, the Attorney General's position is that the complaint, when tested against the Ninth Circuit's standard for standing and ripeness in pre-enforcement challenges, does not set forth sufficient factual allegations to establish federal jurisdiction.

Plaintiffs' November 11, 2022 filing (Dkt. 24) appears to be an effort to provide additional factual allegations that may be relevant to establishing standing and/or ripeness. However, because those allegations do not appear within the four corners of the operative complaint, the allegations set forth in Dkt. 24 should be disregarded for purposes of the instant motion to dismiss. *Cf. Lomma v. Connors*, 539 F. Supp. 3d 1094, 1098 n.2 (D. Haw. 2021) ("An opposition to a motion to dismiss is an improper vehicle to assert additional facts not initially alleged." (alteration and quotation omitted)).

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Respectfully submitted,

/s/ Nicholas M. McLean

Nicholas M. McLean

Counsel for Defendant HOLLY T.
SHIKADA, in her official capacity as the
Attorney General of the State of Hawai'i

CC: Counsel of Record (via ECF)